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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO WAKEFIELD PEANUT COMPANY, LLC FOR 11253 General Mahone Hwy, Sussex County, VA Unpermitted Activity

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Wakefield Peanut Company, LLC, regarding 11253 General Mahone Hwy, Sussex County, VA, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "CWA" means the federal Clean Water Act (33 United States Code § 1251 et. seq.)
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
9. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 and may serve as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge

or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" or "Parcel" means the tract of land at 11253 General Mahone Hwy, Latitude/Longitude 36°57'57.17" N/76°58'39.15"W in Sussex County, Virginia, owned by Wakefield Peanut.
16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed.
19. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
20. "SPGP" or "12-SPGP-01" means the State Programmatic General Permit issued on May 31, 2012 by the U.S. Army Corps of Engineers to the people of the Commonwealth of Virginia, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344). The SPGP authorizes the discharge of dredged or fill material in nontidal waters of the United States, including wetlands, associated with certain types of projects that are within the geographical limits of the Commonwealth of Virginia and under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Norfolk District, provided an SPGP Authorization is obtained from DEQ.
21. "SPGP Authorization" means the notification sent from DEQ to an applicant indicating that a proposed project satisfies the terms and conditions of the SPGP and no additional authorization for the project from the USACE is required.
22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
24. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
25. "USACE" means the United States Army Corps of Engineers.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VWP" means Virginia Water Protection.
29. "Wakefield Peanut" means Wakefield Peanut Company, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Wakefield Peanut is a "person" within the meaning of Va. Code § 62.1-44.3.
30. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are Surface Waters, and generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Wakefield Peanut owns and operates a peanut processing plant and retail store on the Property.
2. On December 7, 2015, DEQ VWP Permit Program staff received a complaint regarding potential unauthorized impacts to state waters associated with the construction of a trailer storage garage on the Property.
3. On January 6, 2016, Department staff investigated the complaint by inspecting the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed that the construction of a trailer garage had significantly altered and degraded approximately 0.24 acres of forested wetlands, which are surface waters, by clearing, grubbing, grading and filling.
4. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibits significant alteration, degradation or filling of surface water without a Permit issued by the Director. Wakefield Peanut does not have a Permit for the above activities.

5. On January 29, 2016, DEQ issued NOV No. 16-01-PRO-701 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
6. On February 2, 2016 Department staff discussed the violations with a Wakefield Peanut representative. Subsequently, on February 3, 2016, Wakefield Peanut's consultant provided a report and then submitted a Mitigation Action Plan on February 17, 2016. A copy was provided to the USACE.
7. After comment by the USACE, on March 2, 2016, Wakefield Peanut submitted a revised Mitigation Action Plan to DEQ and the USACE. The revised Mitigation Action Plan adequately sets forth a plan for the Restoration of the forested wetlands.
8. On March 3, 2016, Wakefield Peanut submitted a Joint Permit Application. On April 20, 2016, DEQ notified Wakefield Peanut that the application had been processed and that in lieu of an SPGP Authorization, the CWA Section 404 violation would be resolved through the issuance of this Order.
9. Based on the results of the January 29, 2016 inspection, the documentation submitted on February 3 and 17 and March 2 and 3, 2016, the Board concludes that Wakefield Peanut has violated Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50, as described above.
10. In order for Wakefield Peanut to complete its return to compliance, DEQ staff and representatives of Wakefield Peanut have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.
11. This Order also resolves the Section 404 violation on the Property. Wakefield Peanut must adhere to all general conditions of the 12-SPGP-01 and requirements of this Order. No additional authorization from the USACE is required.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Wakefield Peanut, and Wakefield Peanut agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$15,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 1104
Richmond, Virginia 23218

Wakefield Peanut shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Wakefield Peanut shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Wakefield Peanut for good cause shown by Wakefield Peanut, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. No. 16-01-PRO-701 dated January 29, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Wakefield Peanut admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Wakefield Peanut consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Wakefield Peanut declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Wakefield Peanut to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Wakefield Peanut shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Wakefield Peanut shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wakefield Peanut shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wakefield Peanut. Nevertheless, Wakefield Peanut agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Wakefield Peanut has completed all of the requirements of the Order;
 - b. Wakefield Peanut petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

APPENDIX A SCHEDULE OF COMPLIANCE

1. Wakefield Peanut shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. Wakefield Peanut shall implement and comply with the requirements and schedule set forth in the approved Mitigation Action Plan (MAP) dated February 17, 2016 (revised February 24 and March 2, 2016). Any changes to the approved MAP shall not be implemented without approval by DEQ.
3. As specified in the MAP, Wakefield Peanut shall submit its annual monitoring report at the end of each growing season for a period of 5 years. Monitoring reports shall be prepared in accordance with the approved MAP and shall be submitted no later than November 30th of each monitoring year. If DEQ determines that site success has been achieved prior to the end of the 5 year period, DEQ may suspend additional annual reporting.
4. Wakefield Peanut shall submit photographs with each annual monitoring report to document that successful growth and adequate coverage has been achieved each growing season. Photographs shall be taken annually at the same locations and with the same orientation.
5. Wakefield Peanut shall include any abatement and remedial actions it performs for any documented invasive species in each annual monitoring report. If DEQ concludes that additional or alternative measures are necessary to address invasive species, Wakefield Peanut shall develop and submit a corrective action plan to address the invasive species and submit it for DEQ's approval. Upon approval by DEQ, Wakefield Peanut shall implement the plan.
6. If any success criteria contained in the MAP is not met during any monitoring period, or if DEQ concludes based on visual observation at the end of the 5 year period that the site has not met the overall restoration goals, then within 60 days, Wakefield Peanut shall develop and submit a corrective action plan and schedule to address the deficiencies. Wakefield Peanut shall submit the plan to DEQ and upon approval by DEQ, Wakefield Peanut shall implement the plan.
 - a. If the performance criteria specified in the MAP or any alternative MAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Wakefield Peanut shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required. Wakefield Peanut shall respond to any DEQ notice of deficiency

to the proposal in accordance with the terms of the notice. Wakefield Peanut shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

7. Unless otherwise specified in this Order, Wakefield Peanut shall submit all requirements of Appendix A of this Order to:

David Robinett
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Rd
Glen Allen, Virginia 23060
David.Robinett@deq.virginia.gov

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Wakefield Peanut.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wakefield Peanut from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Wakefield Peanut and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Wakefield Peanut certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Wakefield Peanut to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wakefield Peanut.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By its signature below, Wakefield Peanut voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016

Michael P. Murphy, Regional Director
Department of Environmental Quality

Wakefield Peanut Company, LLC voluntarily agrees to the issuance of this Order.

Date: 6-7-16 By: James E. Laine President/Partner
(Person) (Title)
Wakefield Peanut Company, LLC

Commonwealth of Virginia
~~City/County of~~ Sussex

The foregoing document was signed and acknowledged before me this 7th day of
June, 2016, by James E. Laine who is
President/Partner of Wakefield Peanut Company, LLC, on behalf of the
company.

Tammy Michelle Warren
Notary Public

7388387

Registration No.

My commission expires: 12/31/19

Notary seal:

